CF0000060860

CA 673/96

(2)

(Jail-188/(Jail)
S.J.P.R.—5,000-9-81

Division Bench (riminal)

APPEAL OF PRISONER

No. 879 Name केन्दला @ केन्दलु

Father's name आपुल स्वामि

Resident गिरहल्ली Age 25

Sentenced to आजीवन कारावास on 9/11/96

Under section 302 IPC by श्री जे.के.दास राज न्यायाधीश अमिकापुर पिछड़ा वर्ग

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appelate Court will not proceed with the base for seven days and the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 9/11/96

3 Date on which Appeal sent

...ed or not – Yes/No.

No. 879 Name केन्दला @ केन्दलु

Continued in अमिकापुर Jail

No. 78 dated 10/11/96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Amhikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न निर्णय पत्र लिपि उपनेश

Superintendent-Central/Dist./Sub-Jail

Date of receipt in C. J. M.'S Office 11/11/96

Date of receipt of record to accompany 8/12/96

Memo of Appeal of the Appellate Court.

No. 0/com Dated 8/12/96 198

Forwarded to the माननीय उच्च न्यायालय इलाहाबाद महोदय

C.J.Magistrate 8/12/96

Date of receipt in Appliate Court

(P.T.O.)

XI-HC-22

(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 673/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 673 of 199

Appellant : Kendruram

Vs.

Respondent : State of Madhya Pradesh

Shri B.D. Badgaiyan, learned counsel for the appellant.

Shri U.N.S. Deo Additional Public Prosecutor with Shri Akhil Mishra, learned P.L. for the respondent/State.

ORAL JUDGMENT

(08.03.2006)

Per L.C. Bhadoo, J

By this appeal the accused/appellant has challenged the legality, propriety and correctness of the judgment of conviction and order of sentence dated 9.1.1996 passed by Session Judge, Sarguja (Ambikapur) in Session Trial No. 185/1995 whereby learned Session Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 673/96 सन् 200

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2. Case of the prosecution in brief is that on 2.4.1995 at about 8 a.m. Khulaso Bai (since deceased) went to collect Mahua flowers along with Rampreet PW-2. At that time, accused Kendruram came there holding axe in his hand and attacked Khulaso Bai on her head and thereby committed murder of Khulaso Bai. Matter was reported in police station Sitapur by PW-1 Gauntiya Ram on which Station House Officer of Police Station Sitapur registered Crime No. 37/95 under section 302 of the IPC, left for the scene of occurrence, took into possession plain and blood stained soil and one utensil of the deceased meant for collecting Mahua flowers under P-3. After giving notice to the Panchas, Panchnama P-4 of the body of Khulaso Bai was prepared. Weapon of offence i.e. axe was sent for chemical examination and the report of the doctor P-7A was received. Site plan P-9 was prepared by the Investigating Officer. Body of Khulaso Bai was sent for post mortem examination to Primary Health Centre, Sitapur where Dr. K.K. Datta conducted the post mortem examination on the body of Khulaso Bai and submitted his report P-6.

3. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class Ambikapur who in turn committed the case to Session Judge, Sarguja (Ambikapur) for trial.

4. The prosecution in order to establish the case against the accused/appellant examined 8 witnesses. Statement of the accused/appellant was also recorded under section 313 of the Code of Criminal procedure in which he denied the prosecution evidence

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मामला क्रमांक CrA 673/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appearing against him and stated that he is innocent and has been falsely implicated in the case.

5. Learned Session Judge after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

6. We have heard Mr. B.D. Badgaiyan counsel for the accused/appellant and Shri U.N.S. Deo learned Additional Public Prosecutor and Shri Akhil Mishra panel lawyer on behalf of the respondent/State.

7. Homicidal death of Khulaso Bai is not in dispute.

8. As far as the involvement of the accused/appellant in crime in question is concerned, the incident was witnessed by PW-2 Rampreet who has stated in his evidence that on the fateful day at about 8 a.m. he along with Khulaso Bai went to collect Mahua flowers near Badhi Kona hill, accused Kendruram came there holding axe in his hand and attacked his mother Khulaso Bai with the axe on her head as a result of which his mother fell down and accused fled away from the scene of occurrence. He has further stated that he also ran away from the place of incident and informed Jhagar, Tala, Jheero, Dega and Gautiyan about the incident. In the cross examination this witness has stated that accused assaulted his mother with axe and as he was frightened therefore he did not raise cries. On suggestion of the counsel for the accused/appellant he has stated that it is incorrect to say that he had not seen the accused assaulting the

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मामला क्रमांक CrA 673/96 सन् 200

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विरुद्ध

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deceased. Evidence of this witness stands corroborated by the medical evidence given by Dr. K.K. Datta PW-6 who has stated that there was haematoma in the size of 5 x 4 c.m. on the occipital region, another haematoma in the occipital region in the size of 4 x 3 c.m., yet another haematoma on temporal region in the size of 3 x ½ c.m. deep up to bone. On dissection he found that occipital bone was fractured and the same was pierced into brain as a result of which membrane of the brain were ruptured. Temporal bone was fractured and there was haematoma beneath the left temporal bone and there was sub dural and extra dural haematoma on the left side of occipital bone. He has further stated that the injuries were sufficient to cause death in the ordinary course of nature. He has further stated that injuries No. 1, 3, 4 and 5 were grievous in nature and deceased died on account of head injury, coma and shock. Therefore, from the medical evidence the ocular evidence of Rampreet PW-2 is corroborated.

9. Learned counsel for the accused/appellant argued that the witness to whom PW-2 Rampreet is said to have informed about the incident have not been examined by the prosecution.

10. We are of the considered opinion that the argument advanced by the learned counsel for the accused/appellant is without force for the reason that they were not the eyewitnesses to the incident. This witness has stated that he informed Jheero, Dega and Gautiyan about the incident and therefore, non examination of Jheero and Dega has no relevance.

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आदेश पत्रक

मामला क्रमांक CMA 673/96 सन् 200

विरुद्ध

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11. Learned counsel for the accused/appellant has also argued that from the evidence of the prosecution it has not been established that the accused assaulted deceased with an intention to cause her death. From the medical evidence it is established that the occipital and parietal bones were fractured as a result of the assault made by the accused/appellant with axe and even fractured bones pierced into the brain. The doctor has stated that injuries No. 1,3,4 and 5 were grievous in nature an therefore, looking to the injuries and the part of the body where they were caused and the nature of the weapon used for the commission of the crime establish that the accused/appellant assaulted the deceased with an intention to cause her death.

12. In the result, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting the accused/appellant under section 302 of the IPC and sentencing him to undergo imprisonment for life. Thus appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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10-12-06 3/12-06